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(VENICE COMMISSION)

COMMENTS

ON THE DRAFT LAW ON JUDGES AND PROSECUTORS

OF TURKEY

by

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Introduction

1. The opinion of the Venice Commission has been sought concerning a draft law on judges and prosecutors of Turkey.

2. The draft Law amends many of the provisions of the existing Turkish law on judges and prosecutors which dates from 1983. That law regulates a number of important matters concerning prosecutors and judges. These include the qualifications required for appointment, the method of appointment, the rights and duties of prosecutors and judges, their salaries and allowances, their promotion and assignment to posts and duties, disciplinary proceedings and penalties, the investigation and prosecution of complaints against or infringements of the law by judges and prosecutors, dismissal, and in service training.

3. While there are many amendments to the existing text, the amending law cannot be regarded as a comprehensive or fundamental reform. Indeed, a comparison of the existing text with the text as it will stand following the amendments does not reveal any fundamental change in the system. Many of the amendments are simply consequential on the restructuring of the High Council of Judges and Prosecutors and the transfer of certain functions to it from the Ministry of Justice. There are also extensive amendments in relation to investigations and criminal prosecution of judges and prosecutors which on the whole are to be welcomed. However, there are certain fundamental problems within the system, mainly centering on the role of the Ministry of Justice and its relationship to the judiciary, which are not addressed in the amendments in any fundamental way.

4. I propose, therefore, to go through the text of the law as it will stand following the adoption of the amendments and to make comments on any aspects of the law which seem to me to call for evaluation or criticism.

General Provisions

5. Chapter 1, Section 1 of the Act sets out general provisions, including a definition of the purpose and scope of the legislation and relevant definitions.

6. Chapter 1, Section 2, sets out the main principles concerning the rights and duties of judges and prosecutors. Article 4, which is not amended by the draft Law, states that judges discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges, and prohibits any person or institution from giving orders or instructions to courts or judges or to send them circulars, make recommendations or suggestions. Judges are stated to be independent in the discharge of their duties and to be required to give judgment in accordance with the constitution, the law and the personal conviction of the judge conforming with the law.

7. Article 5 provides that the Court of Cassation has the right of supervision and monitoring over all the civil courts, the Council of State over all the administrative courts and the various chief prosecutors over the junior prosecutors. Heads of courts are stated to have the right of supervision over judges of their courts in respect of the proper functioning of the exercise of jurisdiction. A proposed amendment to this Article will add a provision to the effect that except for the circumstances for judges within the context of judicial power, the competence for supervision over judges and prosecutors belongs to the High Council of Judges and

Prosecutors. I think this Article could benefit from some further revision to make it clear what exactly is the scope of the supervision and monitoring which may be exercised over the individual judge by more senior judges. Clearly it is essential that the independence of the individual judge in reaching a judicial decision is protected, and it would seem desirable to make it clear that this Article is not intended to dilute this principle which has been stated very clearly in the preceding Article 4. Likewise, while it is in principle open to give a senior prosecutor power to instruct a junior one, in fact is not at all clear from the text what the function of supervision and monitoring covers in relation to prosecutors. I do not see anything in the text of the law to implement the recommendation at paragraph 10 of the Council of Europe's Recommendation REC (2000) 19 that prosecutors have the right to request that instructions addressed to them to be put in writing.

8. An amendment to Article 5 removes the existing provision relating to the right of supervision of the Minister for Justice over judges and prosecutors which was up to now confined to their duties other than those related to the exercise of jurisdictional functions. The amendment now expands the text to make it clear that Ministerial supervision is confined to administrative tasks for prosecutors, the works and functioning of civil and administrative justice commissions, and for judges and prosecutors who hold administrative tasks within the Ministry of Justice and its affiliated and associated institutions, as well as at international organizations and courts or of those temporarily assigned or seconded to other institutions, boards or organizations. It is not clear to the writer what exactly is involved in civil and administrative justice commissions.

9. As a general rule it seems to the writer that if judges and prosecutors hold administrative functions within the Ministry of Justice this tends to blur the distinction between the judiciary or the prosecutors and the executive branch of government. Furthermore, the possibility of judges and prosecutors being assigned to such tasks runs the risk of inculcating a statist attitude among judges and prosecutors and possibly causing them to seek favour from the executive.

Recruitment and Training

10. Chapter 2 deals with recruitment of judges and prosecutors and section 1 deals with the traineeship period. Article 8 sets out the qualifications of trainees. Among the qualities required of a trainee judge or prosecutor is the following (Article 8(g)):

> "Not to have physical or mental health problems or disabilities which will prevent to perform the profession of judgeship and prosecutorship throughout the country, or not to have handicaps such as unusual difficulties for speaking or controlling movement of organs that may be regarded as odd by other people."

This provision is far too broad and I do not think it would be regarded as generally acceptable according to European standards in its approach to how to deal with persons under a physical or mental disability. The test of something appearing odd to other people seems an inappropriate one.

11. Article 8(h) disqualifies persons who have been convicted of an intentionally committed crime and punished by imprisonment of more than six months. It seems to the writer inappropriate that any person who has committed an intentional offence serious enough to be punished by imprisonment of any duration should be regarded as suitable for appointment as a judge or prosecutor.

12. Article 8(j) requires a trainee "not to behave in an inconvenient way for the profession of judgeship and prosecutorship". This may be merely a translation difficulty but certainly in the English language the test of inconvenience as one which would render a person unsuitable to be a judge or prosecutor does not seem at all appropriate.

13. Article 9(a) is an extremely detailed provision in relation to written examinations and interview for positions as trainee judges and prosecutors. A long list of exam subjects is specified. This list does not include the constitutional and legal protection of suspects, victims and witnesses, or human rights, as recommended by paragraph 7 of the Council of Europe's Recommendation Rec(2000)19 in the case of prosecutors. At the interview the interview board is required to evaluate candidates under a number of heading. These include "the appropriateness of the applicants to the profession from his / her physical appearance, behaviour and reactions point of view". Again, it seems extraordinary that physical appearance should be a valid criterion for suitability for appointment as a judge or prosecutor. So far as concerns behaviour and reactions it needs to be clarified what is meant by these and what type of behaviour or reaction would disqualify a candidate.

14. An amendment to this Article provides that persons who have been unsuccessful in interviews on three separate occasions may not be allowed to attend future written exams. This is probably justifiable from a practical point of view to avoid having to continuously evaluate a candidate who has already been found unsuitable on three occasions.

15. Article 10 contains a provision that trainees at a certain point in the pre-service training are to be designated for either judgeship or prosecutorship by the Ministry for Justice. It seems to the writer that while it is appropriate for the Ministry of Justice to determine the total number of persons to be appointed to either profession it would be preferable that the function of assigning people to one or the other lie with the High Council of Judges and Prosecutors rather than with the Ministry.

16. Article 12 deals with dismissal from Office within the traineeship period. The first ground on which a trainee can be dismissed following the commencement of traineeship is when it is realized afterwards that the trainee does not meet some of the recruitment requirements. It would be very undesirable that somebody who did not meet some of the recruitment requirements should be allowed to embark on training in the first place and subsequently be dismissed unless there had been some element of fraud or deception on the part of the trainee.

Performance, Promotion and Appointment

17. Chapter 2, Section 2 deals with classes and degrees of judgeship and prosecutorship. Section 3 deals with degree and grade promotion. Article 21 deals with conditions for promotion from one degree to a higher one. The concept of "moral characteristics" as a criterion for promotion has been removed from the list and this is to be welcomed. Also removed is the criterion of "the number of judgments examined through appeal" and again this is to be welcomed. The new list of criteria includes a number of new matters which include obeying the rules on professional ethics, and the substitution of a revised performance evaluation and development system in place of the earlier appraisal system. The new criteria seem on the whole to be more appropriate than the old, and in the case of prosecutors go some way to implement paragraph 7 of Recommendation Rec(2000)19.

18. Article 23 contains revised provisions in relation to performance forms in the case of judges below the first class and success forms for judges of the first class. These forms are filled by the various heads of courts or chief prosecutors and are to be compiled according to the criteria set out in Article 21. I do not see any requirement that the appraisal carried out by the senior judges and prosecutors has to be discussed with the subject of the appraisal before the forms are completed which would be regarded as good practice. The whole question of appraising the performance of judges and prosecutors, in particular of judges is a delicate one and if not handled with great care has the potential to interfere with the independence of the individual judge. It seems from reading these provisions that they are not directed at trainees but rather at prosecutors and judges who have actually been appointed to Office.

19. In addition to the performance evaluation by senior judges and prosecutors there is also performance evaluation and development prepared by inspectors from the High Council of Judges and Prosecutors and Judicial Inspectors which are provided for in Article 24. While the Law is very detailed it does not really explain how these evaluations are carried out although it seems from Article 24 that one aspect of it is the examination of data gained from the National Judicial Network information system. The evaluation forms are apparently placed on the confidential files of the judges and prosecutors concerned. The Article concludes by saying that the procedures and merits of performance evaluation and development forms are regulated through by-law.

20. The draft Law proposes to delete Article 28 of the existing text. The existing Article 28 appears to provide for appellate courts evaluating the judges in lower courts by giving marks of excellent, good, average and poor during the course of an appeal. The deletion of this existing Article seems to the writer to be welcome as the confusion of the appellate function of courts with the evaluation of judges in the lower courts seems to be quite a remarkable idea. It should not be the function of an appellate court to evaluate the performance of a judge in a lower court. Rather is it the appellate court's function to decide whether the law has been correctly applied and to do justice in the individual case.

21. Chapter 2 section 4 deals with the allocation of judges as to the first class and evaluation of their work. Article 33, which is extensively amended under the new law, provides that in the case of judges who have been appointed to the first class the High Council of Judges and Prosecutors is to assess once in every three years whether they are successful or not taking into consideration the inspector's evaluation and development forms, work performance records, works which were subject to review through legal remedies, and other information related to the professional and academic works.

22. Chapter 2 section 5 deals with various assignments of judges and prosecutors. Article 34 provides that judges and prosecutors employed in administrative positions at the High Council or in the Ministry of Justice are deemed to serve as judges and prosecutors. I have already commented above on what seems to me the undesirablility of persons transferring between the executive and the judiciary or the prosecution in this manner.

23. Article 35 deals with appointment to different locations. One of the provisions (which is not amended by the draft Law), allows judges and prosecutors who have been found unsuccessful in one region to be transferred to another region. Again, one can see the possible potential for using this as a means of exerting pressure on the individual judge or prosecutor. It would be important that the procedural

safeguards for any judge or prosecutor who is to be transferred under compulsion should be set out in the law and the criteria for such transfer clearly stated together with the possibility for the judge or prosecutor affected to answer any case which is made against him and to have a right of appeal to a court of law against any decision to transfer.

24. Article 36 provides for judges and prosecutors to change from one branch to the other which does not give rise to objection in principle. Article 37 deals with the appointment of judges and prosecutors to the Ministry and these appointments are made by the Minister. This latter procedure seems to the writer to give scope for the executive to exercise influence and control over the judiciary and at the very least to have potential to interfere with the independence of individual judges. The last paragraph of the Article provides as follows:

> "Except those who are not assigned or temporarily seconded to international institutions and courts, the consent of the individuals who are assigned from among judicial posts is required for assignments to the central, provincial and abroad units of the Ministry."

I have to admit finding this provision very obscure and again I wonder is there a translation difficulty? The proviso at the beginning of the sentence seems particularly difficult to understand or interpret. On a literal reading it seems to mean consent is required only for transfer from international bodies to the Ministry and not for serving judges or prosecutors to be transferred to the Ministry but if so the syntax (in English) is unnecessarily complicated.

Tenure

25. Chapter 3 deals with the tenure of judges and prosecutors. Article 44 states that judges and prosecutors cannot be dismissed or deprived of their salaries and payments and other rights of an essential character, or retired against their will before the age of 65. The exceptions to this are reserved for those who are convicted of a crime requiring dismissal, who are definitely incapable of performing their job because of their health, or who are decided to be inappropriate for the profession. This latter criterion seems somewhat vague and the concept of appropriateness is a very general one.

26. Article 46 prohibits the appointment of spouses or certain relatives in close degree to the same chamber of a court. The third paragraph of this article is rather curious and again I wonder if there are translation difficulties:

> "The ones who are decided to be incapable of working in their current place because of the determination that they cannot function with honour and impartiality or their existence in that place breaches the influence and esteem of the profession upon the prosecution or documental facts without their faults, will be appointed without their consent to another place within the region they are in."

The writer finds it difficult to understand how a person who cannot function with honour or impartiality or whose function breaches the influence and esteem of the judicial or prosecution profession can be regarded as suitable for transfer to another place rather than meriting dismissal.

27. Chapter 3 section 2 deals with temporary competencies and tasks including training and assignment abroad. There are extensive amendments of a very detailed sort

relating to persons who are sent abroad for training and setting out their financial entitlements. Similar provisions relate to assignments abroad.

28. Chapter 3 section 3 relates to the termination of judgeship or prosecution posts. Article 51 deals with resignation from the profession. Judges and prosecutors are entitled to resign on one month's notice. Person who leave their posts without permission or excuse for more than 10 days or who do not attend work for a total of 30 days in the year are deemed to have resigned from the profession. I do not see any exception in this last provision made for persons who are ill and this should be remedied. Judges and prosecutors may not be members of political parties and those who become members are deemed to have resigned from the profession. The question of judges and prosecutors joining political parties is one which is at times controversial and in the writer's opinion it is reasonable in the developmental state of Turkey to impose such a condition.

29. Article 53(a) provides for the termination of posts of judges and prosecutors where it is decided to dismiss them or their stay in the profession is found inconvenient. While the latter criterion may well be the result of a translation error the concept of inconvenience as a grounds for dismissal seems to the writer wholly inappropriate.

30. Chapter 4 deals with working hours and leave. Section 1 deals with working hours and places of residence. Section 2 deals with leave.

Records and Appraisals

31. Chapter 5 deals with records and appraisal files and professional identity cards. Article 59 provides for the keeping of a confidential record which includes performance forms, performance evaluation and development forms which are to be kept in the confidential record. It seems to the writer that if performance forms and performance evaluation and development forms are to be kept in relation to judges and prosecutors the judges and prosecutors themselves should be entitled to see those forms and be aware of their contents, and should be entitled to comment on them at the time when they are drawn up.

32. Article 61 states that those who have the authority to fill performance forms and the format of those forms is to be set out in a bylaw drawn up by the High Council for Judges and Prosecutors. It seems to the writer that this is too important a matter to be left to a bylaw.

Discipline and Dismissal

33. Chapter 6 deals with disciplinary sanctions and dismissal from the profession. Article 62 provides for the following disciplinary sanctions which can be imposed on judges and prosecutors by the High Council for Judges where it is has established that their behaviour is incompatible with the requirements of the profession and post, taking the circumstances and gravity of the situation into account. The sanctions which can be applied are as follows:

(a) warning
(b) cut from salary
(c) condemnation
(d) suspension of grade advance
(e) suspension of degree promotion
(f) change of location
(g) dismissal from profession

34. A fundamental difficulty with the provisions on discipline and dismissal is that no provision is made for appeal against a decision to a court of law. This should be remedied.

35. Article 63 states that a warning is a written notification indicating that more careful discharge of duties is necessary. It can be imposed for various matters including disorderliness, carelessness on duty, improper conduct towards colleagues and staff and people the judge or prosecutor has contact with in the course of carrying out his or her duties, on punctuality, negligence or incomplete performance of duties.

36. Article 64 provides that the cutting of salary relates to unauthorized absence. Condemnation is a written notification indicating a fault and can be imposed for conduct harming respect and trust for the official position, discrediting the service by dressing in an inappropriate manner, using state owned instruments for private purposes, ill-treatment towards colleagues and other persons. Article 65(e) contains a curious provision (which I do not understand) as follows:

> "Not notifying the Council the commercial or fetching activities of his / her spouses, children under legal age or interdicted children within 15 days."

Clearly there seems to be a translation difficulty here.

37. In addition condemnation can be imposed for not fulfilling instructions given by the Ministry under the relevant legislation and neglecting supervision over offices and bureaus. Article 65(g) is somewhat vague "conduct that prevents the harmony of the service".

38. Article 66 provides that a grade advance can be prevented for one year. This can be imposed for having the habit of unpunctuality, incurring a debt which the judge or prosecutor is unable to pay, not declaring property, not coming to the Office for four to nine continuous days.

39. Article 67 permits suspension of promotion to a higher degree for two years. This is imposed for not coming to the office for 15 days in total during one calendar year without permission or an admissible excuse, or carrying out activities which are banned for members of the profession or commercial activities which are not in compliance with the requirements of the profession.

40. Article 68 provides that change of location can be imposed for:

> "loss of the honour and ascendency of the profession or personal honour and dignity by faulty or improper conduct and affairs".

Secondly, it can be imposed for:

> "causing a perception that he cannot perform his duty properly and impartially by his performance and conduct."

It can also be imposed for:

> "causing a perception that he performs his duties according to his individual emotions or in one's favours."

It seems to the writer that causing a perception of something rather than actually doing it are not appropriate criteria for carrying out a serious sanction on a judge or prosecutor.

41. A perception may be entirely wrong and it should be necessary to prove that the judge or prosecutor has engaged in misconduct rather than that some persons thinks he might have done. This is carried to extremes in Article 68(e) which permits a change of location where a judge is deemed to have:

> "caused a perception that he has been involved in bribery or extortion even though no material evidence is obtained."

This may be contrasted with Article 68(f) which again provides for change of location where a judge:

> "demands gifts directly or through an intermediary or accepts gifts given for obtaining benefits even out of duty or requesting or taking debt from clients in court."

It seems to the writer this latter conduct, if proved, would warrant dismissal and not merely transfer and is to be contrasted with the notion that somebody can be transferred simply for the fact that there is a perception they have taken a bribe even where there is no evidence.

42. Article 69 deals with dismissal. The first ground of dismissal is for those who are sanctioned twice with change of location. Given that change of location can be imposed on a judge who has caused the perception of something without any evidence that he has actually done it, to allow dismissal where somebody has twice been sentenced to a change of location seems to the writer unacceptable. Apart from that, dismissal seems to be applied only where the judge or prosecutor has committed a criminal offence except in cases where behaviour which does not result in a conviction violates the honour and dignity of the profession or ascendency and honour of the position which the judge or prosecutor holds.

43. Article 71 (which will be extensively amended by the law) provides for the right of a judge or prosecutor to defend himself in disciplinary cases. The Article requires that the judge or prosecutor be informed in a way which includes separately and clearly the actions attributed to him or her, the subject matter of the investigation and the place, time and aspects of the actions which are alleged to have occurred. The judge or prosecutor has the right to require the testimony of the witness and the collection of evidence in his or her favour. They have the right to examine the files in person or through their legal representatives and to receive copies and may also defend themselves orally or in writing before the Council for Judges and Prosecutors or via their legal representatives. These provisions seem clear and appropriate and the amendment is a considerable improvement to the text. However, the absence of any right of appeal to a court of law is a serious defect in the law.

44. Article 72 states that it is not necessary to have a disciplinary investigation as well as a prosecution where one is brought. However, the conviction or acquittal of the person on criminal charges does not prevent imposition of a disciplinary sanction. These provisions seem to the writer appropriate. There is a three year limitation on the initiation of a disciplinary investigation and a five year limit on the imposition of disciplinary sanctions.

45. Article 73 of the current law is to be abolished. That article gave the Minister of Justice the right to request a review of a disciplinary decision. In that case, the High Council was required to make a decision after conducting the necessary examination. The deletion of this article is to be welcomed.

46. Disciplinary sanctions become effective on the date they are finalized. Persons whose dismissal are sought may be suspended until matters are finalized and in such a case they are paid half their salaries. Where disciplinary sanctions less than dismissal are imposed the record of those sanctions is deleted from the personnel records after four years.

47. Chapter 6 section 2 deals with suspension from office. This may be carried out where an investigation is taking place and it is decided that continuation of the judge or prosecutor will harm the investigation or the honour of the judicial power. The decision is for the High Council of Judges and Prosecutors. A suspended person is paid two-thirds of the salary.

48. According to Article 80, where criminal proceedings are discontinued or a disciplinary sanction other than dismissal is imposed or where there is an acquittal or a decision not to prosecute in a criminal case or where a sanction less than dismissal is imposed at that stage the suspension is lifted. According to Article 81 the maximum duration of suspension is 18 months.

Investigation and Prosecution

49. Chapter 7 Part 1 deals with investigations and Chapter 7 Part 2 deals with criminal prosecutions. These provisions will be extensively amended by the draft Law.

50. Article 82 removes the requirement for the permission of the Minister for Justice to undertake criminal investigations. Under the new provision criminal investigations as to whether judges or prosecutors have committed criminal offences in connection or in the course of their duties or in relation to conduct considered incompatible with the requirements of their status and duties are to be carried out through the High Council of Judges and Prosecutors own inspectors with the approval of the Council. As an alternative an investigation may be carried out through a judge or prosecutor more senior than the one who is to be investigated. In the case of judges and prosecutors employed in the Ministry investigation may be carried out by judicial inspectors with the Minister's permission. They may also be undertaken by a judge or prosecutor more senior than the one being examined.

51. According to Article 85 requests for arrests are decided by the authority authorized to open prosecution.

52. The draft proposes to abolish existing Article 86 which says that persons who are not judges or prosecutors and who jointly commit offences with judges and prosecutors are subject to the same procedures. This abolition is to be welcomed. Article 87 is proposed to be amended so that completed investigations are sent not to the Ministry of Justice but to the High Council. The relevant chamber of the High Council makes the decision whether to investigate on the investigation file whether to initiate disciplinary proceedings where a criminal prosecution is not found necessary. It decides whether to impose a penalty after hearing the defence of the person concerned. It can decide to send the file to the competent judicial authority if initiation of a criminal prosecution is found necessary. It can send the file to the Ministry in relation to disciplinary penalties against judges or prosecutors working in the Ministry.

53. Article 88 provides that judges and prosecutors alleged to have committed an offence cannot be arrested, searched, or interrogated nor can their houses be searched except in cases where an offender is found committing an offence *flagrante delicto*. In previous opinions the Venice Commission has criticized the exclusion of judges and prosecutors from provisions relating to arrest, search or interrogation, except in cases where such arrests or other procedures would interfere directly with the operation of a court of law.

54. Chapter 7 Section 2 deals with the prosecution of judges and prosecutors and again the draft proposes extensive amendments to this section. Under the proposed new provisions where the Council, or the Ministry in the case of judges and prosecutors working in the Ministry, consider that prosecution should be initiated the file is then sent to the appropriate prosecution office.

55. Article 90 provides for the conduct of prosecutions by prosecutors more senior than the judges or prosecutors who are charged with criminal offences.

56. Chapter 7 Section 3 deals with personal offences (i.e. offences committed by judges and prosecutors which are not directly related to the performance of their duties). It provides that these investigations and prosecutions are to be carried out by senior prosecutors and the more high level courts. Article 95 requires cases related to judges and prosecutors to be considered as urgent cases and states that unless there are obstacles stemming from legal obligations, these cases cannot continue for more than three months.

57. On the whole, it seems to the writer that the proposed amendments to Chapter 7 which deal with investigation and prosecution constitute an improvement to the current provisions.

Other Matters

58. Chapter 8 deals with the inspection of judges and prosecutors. The effect of this Chapter is to transfer the function of inspection from judicial inspectors appointed by the Minister for Justice to Council inspectors appointed by and under the control of the High Council for Judges and Prosecutors, except in the case of judges and prosecutors working at the Ministry. Again this reform should be welcomed.

59. Chapter 9 deals with the financial and social rights and benefits of judges and prosecutors. The draft Law does not propose to amend this Chapter.

60. Chapter 10 deals with the establishment and duties of justice commissions. The draft Law does not contain any amendments to this chapter, except for one minor amendment to Article 114.

61. Chapter 11 deals with miscellaneous provisions and the only proposed amendment, which is to be welcomed, amends the provision relating to the issuing of bylaws concerning in service training of judges and prosecutors so that these in future will be made by the Council for Judges and Prosecutors and the Turkish Justice Academy instead of by the Ministry of Justice and the Academy as heretofore.

Conclusions

62. The Turkish Law on Judges and Prosecutors is a comprehensive and very detailed law regarding most aspects of the professional lives of judges and prosecutors.

63. The draft amending law amends a substantial number of the provisions and the amendments range from those which are relatively trivial to the technical and some which are of importance. However, the amendments do not amount to a systematic and fundamental reform of the Law.

64. For the most part the amendments which are made are to be welcomed. An important element in the amendments consists of provisions transferring powers of supervision from the Ministry of Justice to the High Council of Judges and Prosecutors. These changes are to be welcomed as representing a step in the right direction, albeit a relatively modest one.

65. Another welcome amendment concerns the strengthening of the rights of judges and prosecutors to answer disciplinary charges and complaints. The absence of an appeal to a court of law against dismissal or disciplinary sanction is a serious defect in law.

66. On the whole many of the provisions of both the existing law and the proposed amendments are unexceptionable. Among matters which give this writer some concern, however, is the relationship between the executive in the form of the Ministry of Justice and the judiciary and prosecutors which in some respects seems too close in a manner which may pose a risk to independence, in particular through the transfer of judges and prosecutors to work in the Ministry. Aspects of the system of performance evaluation also give rise to some concerns which should be addressed. The function of supervision and monitoring of judges is not clearly defined and the scope of supervision and monitoring is unclear giving rise to concerns that it would be a means to undermine the independence of judges and prosecutors.